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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/719,379	06/04/2001	Lauren O Bakaletz	B45145	8236

20462 7590 12/09/2004

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EXAMINER

DEVI, SARVAMANGALA J N

ART UNIT

PAPER NUMBER

1645

DATE MAILED: 12/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/719,379

Applicant(s)

BAKALETZ ET AL.

Examiner

S. Devi, Ph.D.

Art Unit

1645

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 September 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 32-60 ~~is/are~~ are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 32-60 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**Lack of Unity of Invention(s)**

1) Claims 1-31 have been canceled.

New claims 32-60 have been added and are under prosecution.

It has been noted that several claims in the instant application are improperly multiple dependent.

2) The instant application lacks unity under PCT Rule 13.1 and 13.2:

- I. Claims 32-48, drawn to a peptide comprising one or more amino acid sequences of SEQ ID NO: 1, 2, 3 and 4 or antigenic variants thereof with the proviso that variant do not include SEQ ID NO: 5 or 6, a chimeric polypeptide, a vaccine and a kit comprising the same, and a method of inducing an immune response in a mammal using the vaccine.
- II. Claims 49-55, 59 and 60, drawn to a DNA or RNA encoding one of the peptides of invention I, a host cell and a kit comprising the same, a process of using the host cell, and a method of using the DNA.
- III. Claims 56-58, drawn to a purified antibody to the peptide and chimeric polypeptide of invention I, a kit comprising the same, and a method of using the same.

3) Inventions I to III lack unity. The special technical feature of the first claimed invention is a peptide comprising one or more amino acid sequences of SEQ ID NO: 1, 2, 3 and 4 or antigenic variants thereof with the proviso that variant do not include SEQ ID NO: 5 or 6, a chimeric polypeptide. The special technical features of inventions II and III are: a DNA or RNA; and an antibody respectively, which do not share significant structural elements with each other or with the peptide of invention I. Peptides, which are composed of amino acids; polynucleotides, which are composed of purine and pyrimidine units, and antibodies which are glycoproteins, do not share significant structural elements. Accordingly, the different recognized inventions are not so linked as to form a single general inventive concept as a technical relationship involving one or more of the same or corresponding special technical features in the sense of Rule PCT 13.2 does not exist between the subject matter of the different recognized inventions.

4) Papers related to this application may be submitted to Group 1600, AU 1645 by facsimile transmission. Papers should be transmitted via the PTO Fax Center, which receives transmissions

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24 hours a day and 7 days a week. The transmission of such papers by facsimile must conform with the notice published in the Official Gazette, 1096 OG 30, November 15, 1989. The RightFax number for submission of amendments, responses or papers is (703) 872-9306.

5) Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAG or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.Mov>. Should you have questions on access to the Private PAA system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

6) Any inquiry concerning this communication or earlier communications from the Examiner should be directed to S. Devi, Ph.D., whose telephone number is (571) 272-0854. A telephone message may be left on the Examiner's voice mail system. The Examiner can normally be reached on Monday to Friday from 7.15 a.m. to 4.15 p.m. except one day each bi-week, which would be disclosed on the Examiner's voice mail system.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Lynette Smith, can be reached on (571) 272-0864.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (571) 272-1600.

December, 2004

  
S. DEVI, PH.D.  
PRIMARY EXAMINER